DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
LICENSE AGREEMENT
FOR SERVICES BETWEEN

(Infinite Campus, Incorporated	)	(Office of Finance and Management	)
(4321 109th Avenue NE	)	(800 Governors Drive	)
(Blaine, MN 55449	) AND	(Pierre, SD 57501	)
(Hereinafter referred to as Vendor	)	(Hereinafter referred to as State	)

This Agreement may not be assigned without the express prior written consent of the State.

The STATE hereby enters into a License and Maintenance Agreement with the Vendor.

I. **THE VENDOR:**

A. The Vendor services on this agreement commence July 1, 2010 and shall end July 1, 2014.

B. The Vendor has affirmed that he/she is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

C. The Vendor will use state equipment, and facilities.

D. The Vendor's Employer Identification Number is 41-1745930.

E. The Vendor agrees to :

Provide ongoing licensing, maintenance and support of a Statewide Student Information System (SIS) to the State to be known as State Edition (SE) and a district level Student Information System to be known as District Edition (DE). The systems are browser based, platform independent, browser independent, and fully compliant of the latest reporting requirements for the State. The browser based systems support a central data base for "real time" data access of student information statewide.

Provide a District Client Executive to work with South Dakota School Districts using District Edition. The District Client Executive will be responsible for developing working relationships and maintaining communication between the Vendor and the South Dakota School Districts; working closely with the Vendor's internal resources on the South Dakota School District's behalf; facilitating requests for additional training, services, custom development and the delivery of add-on products; and communicating upcoming events and product releases as approved by the State.

Provide a State Client Executive that works with the State. The State Client Executive will be responsible for developing working relationships and maintaining communication between the Vendor and the State; working closely with the Vendor's internal resources on the State's behalf; facilitating requests for additional training, services, custom development and the delivery of add-on products; and communicating upcoming events and product releases.

Provide a Business Analyst to work on the localization needs of South Dakota Districts and the State. The Business Analyst will be responsible for compiling state specific requirements, creating proper documentation, testing functionality, analyzing and debugging issues with state specific components of Campus. The analyst will work with the State and District staff, and the Vendor's internal resources to

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ensure that necessary requirements are functionally documented, adequately tested and accurately integrated into the product.

Assume costs associated with any development, data conversion, patches, or bug fixes that arise solely from the error and fault of the Vendor.

Notify the state a minimum of six (6) months in advance of the Annual Software Upgrade timeframe as specified in Section I. E.7 if any upgrade is needed to the State's hardware to support the planned upgrade.

Notify the state in advance of any additional products modules to be purchased by the districts. The terms of Section I.E.21 shall apply.

SPECIAL PROVISIONS

1. **Corporate Agreement**
   Infinite Campus, Incorporated is the legal entity representing all interests of the Vendor under this agreement.

2. **License Agreement**
   Type of License. Subject to the terms of this agreement, the Vendor agrees to grant the State a non exclusive, non-transferable, non-sublicensable, non-perpetual right and limited-term license to the Infinite Campus Products, including all necessary software modules to fulfill the State's requirements. This includes appropriate modifications to the software to meet such requirements as specified herein. The licenses granted hereby are personal to the State.

   Title: Ownership. The State acknowledges that the Infinite Campus Products; all source code, object code, class libraries, user interface screens, algorithms, development frameworks, repository, system designs, system logic flow, and processing techniques and procedures related thereto; the Documentation, any system user documentation, or other documentation related thereto; any copies and derivatives of any of the foregoing, in whole or in part; as well as all copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing; are and shall remain the sole and exclusive confidential property of the Vendor. The State further acknowledges that any reports or other data generated by the Vendor products regarding traffic flow, system loads and/or product installation are the exclusive property of the Vendor and may be used, and the State hereby specifically authorizes the use of such reports and/or other data, with prior written approval from the state.

   Protection of Vendor products and documentation. The State shall not allow, and shall not allow any third party to:

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- adapt, modify, change, maintain, translate, decompile, disassemble, reconstruct, or reverse engineer the Vendor Products or the documentation, or any portion thereof;

- identify or discover any source code of the Vendor products;

- distribute, sell or sublicense copies of the Vendor products or the documentation or any portion thereof;

- create copies of the Vendor products or the documentation except to make a copy of any program which is required as an essential step in its utilization or to make an archival or back-up copy of the Vendor products; or

- incorporate any portion of the Vendor products into or with any other of the Vendor Products or other products, or create any derivative works of the Vendor products or documentation.

Confidentiality. The State agrees that the Vendor products contain proprietary information, including trade secrets and confidential information that are the exclusive property of the Vendor or Vendor licensor. During the period this Agreement is in effect the State and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information other than to inform permitted users of the conditions and restrictions on the use of the Vendor products or the documentation set unless otherwise required by state law.

During the term of this agreement the State may access data through the Vendor's web site to access, print, and use internally all information contained on the web site. The Vendor grants the State rights to modify and customize web pages within the software.

During the term of this Agreement, Districts may access, print and use internally, all information contained on the web site. Only Districts participating in the license agreement, through the State, are authorized to exercise this provision.

The End-User License Agreement is extended to the Districts participating in the Statewide Student Information System. The State will notify the Vendor, in writing, of each District authorized to participate under the State License Agreement. The Vendor will not directly solicit Districts to enter into a separate Agreement for product purchases available under this Agreement except for additional software and services (i.e., training). In the event that a District chooses to "opt-out" of the Statewide Student Information System provided by the State, or under any termination of this Agreement, the Vendor shall not be precluded from perusing business opportunities separate from this Agreement and contracting directly with the District

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Rights Upon Termination. All data produced by the Districts and State, through means of the software system, shall be wholly and solely owned by the respective Districts and the State. The State reserves the right to distribute, transfer, and/or reproduce such data, in whole or part, to any other entity designated by the State. Upon any termination of this Agreement the State shall cease to use the Infinite Campus Products and shall return to Vendor the Infinite Campus Products and all copies thereof and all proprietary and confidential property of Vendor. The State shall expunge all copies of the Infinite Campus Products from its computer(s) and server(s) and shall provide a certificate of an officer of State stating compliance with the preceding sentence. Vendor shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to the State's failure to comply with the provisions of this Agreement.

3. **Source Code Escrow**
   a. **Deposit in Escrow**. The Vendor will store with a third party Escrow Agent a certain computer source code for the program(s) licensed as part of this Agreement, including all Vendor-owned source code necessary to continue operations of District Edition and State Edition, and other information regarding any additional third party software used in conjunction with the products and any available configuration and maintenance instructions available. The Vendor will, at the State's expense, designate the State as a User in its Software Source Code Escrow Agreement. The State will have the right to receive materials placed into escrow upon all conditions having been met ("Release Event").

   b. **Conditions for Release**. The State will have the right to obtain the Source Code in accordance with and subject to the terms and conditions of the Escrow Agreement provided that all of the following three (3) conditions are met (collectively a "Release Event"):

      i) The Vendor will wind down its business or liquidate its business under a Chapter 7 Bankruptcy proceeding;
      ii) No entity has succeeded to the Vendor's obligations to provide maintenance and support on the Software in accordance with the Agreement in effect between the parties; and,
      iii) The State is not in breach of its obligations under this Agreement.

   c. **Source Code**. Unless a Release Event occurs, in no event shall the State have the right to use the Source Code for any purpose, and the State is specifically prohibited from using the Source Code to reverse engineer, develop derivative works or to sublicense the right to use the Source Code to any other person or entity for any purpose. The State will also be obligated to treat the Source Code as Confidential Information of the Vendor under this Agreement.

   d. **Source Code License**. Upon occurrence of a Release Event, the State shall be deemed to have, automatically, a non-exclusive, worldwide, perpetual license to use, modify, copy, produce derivative works from, display, disclose to persons who have entered into a written agreement containing substantially the same confidentiality provisions as in this Agreement for the sole

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purpose of maintaining the Software for Licensee, and otherwise to utilize the Software and the Source Code and other materials necessary to maintain and improve the Software for use by the State, subject always to the limitations in this Agreement on reproduction and use of the Software for production purposes.

e. Cost. The cost for establishing and maintaining the Escrow Account will be the liability of the State.

4. **Vendor Business Continuity Plan**
Within ninety (90) days subsequent to the execution of this Agreement, the Vendor will create and maintain a business continuity plan with respect to the services provided to the State which shall address any unplanned interruption of undetermined length of the business operations of the Vendor. During such interruption, optional or on-request services shall be provided by the Vendor only to the extent adequate capacity exists at the recovery location and only after stabilizing the provision of base services. The Business Continuity Plan shall address communication protocols and anticipated service levels given an interruption.

5. **Audit**
The State has the option to require a security audit and vulnerability assessment to provide third party verification of the Vendor's IT security safeguards for District Edition, State Edition, and its data. The audit shall be performed at the State's expense. If, during the security audit and vulnerability assessment, significant vulnerabilities which would allow unauthorized access to the data are found, the vulnerabilities will be remedied at no cost to the state.

6. **Browser**
The Vendor agrees to provide browser compatibility access to the current system version through Internet Explorer – W3C compliant browsers.

7. **Critical Process Periods**
When notified by the State of occasions where the State is engaged in using Production systems for critical business processes including, but not limited to, new school semester initialization or semester end rollover ("Critical Process Periods"), the Vendor will: (i) avoid scheduled down time during that Critical Process Period, and (ii) accelerate the response to and escalation of responses arising during that Critical Process Period. These special efforts of the Vendor are subject to the availability of resources and the need of the Vendor to appropriately maintain its service offerings and operations infrastructure for its business generally. The State will identify Critical Process Periods only for events outside of typical performance of the State's work. Critical Process Periods are defined as:

| August 1 – September 1: | School Start-Up |
| September 15 – November 1: | Fall Data and Mid-Terms |

_____

State Auditor Number

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November 15 – December 15	December Child Count
January 1 – January 30:	Semester End
March 15 – April 1:	Mid-Terms
May 5 – June 15:	Finals/AYP Year End
July 1 – July 14:	Annual Software Upgrade

Failure to adhere to the Critical Process Period schedule will result in a Level 1 violation as listed under the Service Level Agreement.

8. **Service Level Agreement**
   a. **Availability of Services**. Subject to the terms and conditions of this Agreement, the Vendor shall use its best commercial efforts to make available the District Edition and State Edition systems for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement.

   b. **Service Availability**. The services are deemed "Available" insofar as the majority of users of the system are able to use the system as they normally would.

   c. **Downtime**. The State agrees that from time to time, the service may be inaccessible or inoperable for various reasons, including (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which the Vendor or the State may undertake from time to time; or (iii) any loss or interruption of services due to causes beyond the control of the Vendor or which are not reasonably foreseeable by the Vendor, including, but not limited to, performance failures of telephone companies or other common carriers, interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, government regulations or controls, natural disasters, and wars, acts of terrorism, riots or insurrections; and, (iv) any loss or interruptions of service due to areas of responsibility of the State, including routers, switches, security apparatus, network equipment, server hardware and server operating system software.

   d. **Advance Notice**. The Vendor shall provide five (5) business days advance notice to the State in the event of any scheduled Downtime.

   e. **Adjustment of License and Support Fees**. The State and the Vendor agree the State Edition License and Support fees shall be adjusted, based on the availability of services based upon the number of hours of production time lost due to inaccessible or inoperable systems, excluding "Downtime" or other interruptions to service scheduled in advance and agreed upon by both parties.

   Level 1: Each time the District Edition or State Edition system is unavailable for longer than thirty (30) minutes but less than sixty (60) consecutive minutes, the State

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shall be entitled to a reduction in the annual State Edition License and Support fees of $5,500.00.

Level 2: Each time the District Edition or State Edition system is unavailable for longer than one (1) hour but less than four (4) consecutive hours, the State shall be entitled to a reduction in the annual State Edition License and Support fees of $13,750.00.

Level 3: Each time the District Edition or State Edition system is unavailable for longer than four (4) consecutive hours in any quarter the State shall be entitled to a reduction in the annual State Edition License and Support fees of $27,500.00.

The "start time" for the unavailability measurement is defined as the beginning point in time where the users (Districts), State and Vendor can define the system as not being available for normal use. In no event shall the reduction of the annual State Edition License and Support Fees exceed the actual annual State Edition License and Support Fees paid.

9. **Vendor Trade Mark**
All license rights and interests of the Vendor trademark is retained by the Vendor. Therefore, the State will assert no license rights, or interest in such trademark.

10. **Data Storage**
During the term of this Agreement, the Vendor will store data via its software on the State's computer system. The State will adopt reasonable procedures to backup and replace lost or damaged data. Upon termination of this Agreement, the Vendor shall have no obligation to maintain this data.

All data stored on the software system remains the property of the State and its end users (Districts).

11. **Support**
The Vendor shall provide full computer system support services to the State and the Districts to aid in the on-going operation of the Student Information Systems licensed through the Agreement. Support will be provided through this Agreement for all components of the software including District Edition and State Edition. Services provided by the Vendor shall include, but not be limited to, toll-free telephone support, an online support web site, technical consulting, and support. In addition, services include the latest technologies for online support, including documentation and solution searches, online tutorial, message boards and quick reference materials to ensure quick responses to research inquiries. Server administration will be a Bureau of Information and Telecommunications (BIT) responsibility.

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Phone line support – A specified District contact (up to two individuals per District) will be provided End User 1-800 telephone access to its support staff from 7:00 a.m. to 4:00 p.m., Central Standard Time (CST), Monday through Friday.

On-line Web Site Support – End Users will be provided access via Internet to the Vendor's web site support, available twenty-four (24) hours a day, seven (7) days a week. Exception will be published maintenance times. Service requests must be acknowledged within 4 business hours of being submitted.

For support cases submitted by the State Department of Education under the "SD Department of Education" account, the Vendor shall provide a bi-weekly written report on the status of all open service requests which have not had activity or an update in the prior 14 days. For the purposes of this reporting, the Vendor shall report on service requests with the following statuses: New, Pending Customer Qualification, Qualified, Assigned, Investigation, Pending Customer Input, L1 Escalation, Campus Escalation, L2 Escalation, L3 Escalation, L3 Investigation, Server Config/Hosting, Knowledge Escalation, Implementation Escalation, Services Escalation, and Custom Dev Escalation. The written report shall include the following information for each case:
- Case Number
- Individual who the case has been assigned to

The Vendor will provide full support for the Districts for the portion of the system referred to as District Edition.

12. **Training**
The Vendor will provide ongoing training as requested by the State to be paid as outlined in Section II.C.4.

The Vendor may also provide, at their own expense, interactive training sessions and networking opportunities through the annual Infinite Campus Interchange or other user group trainings.

From July 1, 2010 through June 30, 2011 Vendor shall provide free access to the following services (previously referred to as ICU):
Unlimited access to pre-recorded training session
Unlimited access to "self-paced" instructional materials
10 seats, per district, to web-based, instructor led training session.

13. **Maintenance**
The Vendor will provide comprehensive maintenance. Maintenance will include, but not be limited to the following:
a. Application enhancements/updates
b. Bug fixes

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14. **Equipment**

The State will provide the appropriate equipment required to ensure the successful implementation of the software. The vendor has supplied the hardware and software specifications defining the hardware and software requirements of the application in Section 24.j and 24.k of this agreement. Hardware requirements must be approved by BIT.

15. **Vendor Updates**

The Vendor will provide the State with periodic updates to the licensed modules at no additional fee or charge during the term of this Agreement. This includes no charges for problems that may occur as a result of modifications to the original software.

In the event that such updates or upgrades will require changes to the hardware or environment the Vendor shall notify the State a minimum of six (6) months in advance of any updates if any upgrade is needed to the State's hardware to support the planned update.

16. **State Operating Environment**

The Vendor software is designed for use with the hardware and software provided by the State. The Vendor assumes no responsibility for providing such hardware or software, and its operation except for in the case of additional features for districts as outlined in Section I.E.21 below.

The Vendor's software is designed to operate on the State's operating environment as long as the minimum level of required hardware is provided by the State. The State is therefore responsible for providing such minimum hardware and software.

The State is responsible for ensuring that a proper environment exists and adequate utilities are provided for the computer system on which the Vendor's software will operate, including an uninterrupted power source.

All operating system, database updates, performance monitoring and virus patches are the responsibility of the State.

17. **Reports**

The Vendor will assure that all the State's student information reporting requirements are fulfilled. This includes "ad hoc" reporting capabilities using 3rd party software tools. In addition, the Vendor will assure that statistical and reporting requirements related to the Student Information System mandated by current and future Federal or State statute will be added as needed at no cost to the State.

18. **Security**

Vendor will establish and maintain application security. All software supported by the Vendor is the Vendor's responsibility to support and maintain from a security perspective. If a breach of security

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is realized, the vendor will cure the breach within 15 days of the realization. The State shall have all available legal and equitable rights and remedies to which it may be entitled with respect to Vendor's failure to comply with this provision of this Agreement.

19. Private School Participation
Vendor agrees to allow Private Schools to participate under the State's license agreement.

It is also agreed that the license fee for the Private Schools will be paid for by the school; however, they will be offered the same rate as charged for the Public School Districts. Payment terms for implementation, training and support shall be mutually agreed upon by the Vendor and the Private School. Pricing for such services shall be established based on the terms of this agreement. If terms are not, for any item, covered under this contract, the Vendor and Private School will mutually agree upon price. However, such price will not exceed established Vendor rates.

20. Work Location
With the exception of a catastrophic event, or an event deemed reasonably serious in nature, the Vendor will not be required to perform onsite. This does not pertain to training or other aspects of the contract that stipulate site visits.

21. Additional Add-On Products for Districts

a. External to this Agreement
The State will only provide for the product purchases solely under this contract on behalf of the School Districts and the State. Additional add-on products of the system offered by the Vendor shall be paid by the Districts. If a District desires additional products the Vendor will enter into an agreement directly with the Districts. The agreement will cover only add-on products.

b. Certify Readiness of Infrastructure
Additional add-on products must be approved by the State prior to being implemented by the Districts. The Vendor will work with BIT to certify any new products readiness, related to infrastructure impact, prior to going into the production environment. The State and Vendor agree to work cooperatively to define the change management and acceptance process for future infrastructure impact of add-on products. At a minimum, the Vendor must provide technical specification documentation. The State must disapprove the installation of new add-on products within 30 days of receipt of the notification and technical specifications document, otherwise the add-on product will be deemed approved.

Upon the request of the State, the Vendor will provide any new hardware and software required to establish the testing environment needed for certification of any new add-on products. The hardware and software shall be hosted by the State and returned to the Vendor when testing is complete.

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In cases where the testing, based on the measurement criteria defined below, has indicated that the addition of new add-on products would results in additional hardware or software costs to the existing system, the expense, based on actual costs, will be borne by the Vendor. The funding for these costs may be a direct reimbursement to the State or a reduction in contract price.

c. **Individual District Installations**
The Vendor will inform the State and State's BIT office in writing at least 30 days prior to district implementation, when each District purchases add-on products providing sufficient time for BIT to make any necessary configurations changes required.

In cases where the addition of individual district installations, based on the measurement criteria defined below, results in additional hardware or software costs to the existing system, the expense, based on actual costs, will be borne by the Vendor. The funding for these costs may be a direct reimbursement to the State or a reduction in contract price.

d. **System Performance Measurement Criteria**
The Vendor wishes to offer add-on products to the districts and the State wishes to prevent those additional add-on products from: 1) negatively impacting the base systems performance, and; 2) incurring additional hardware or software expense that are derived from the use of additional add-on products by the districts. Therefore, measurement criteria are necessary to determine if the addition of new add-on product has caused system performance degradation.

Vendor and State agree to meet within 30 day of execution of this agreement to agree to a base set of measurements that will occur no less than monthly in order to establish a "baseline" of performance and to define the acceptable ranges for each of the measurement criteria. At a minimum this criteria shall be CPU utilization, Memory Usage, Disk IO, Network Connections, and Concurrent Sessions. State BIT shall provide the network connection report, Vendor shall provide other metrics.

Over time, as use of the base system expands and changes or Updates to the system change system behavior, both parties acknowledge that hardware requirements can change. As such, Section 15 of this agreement allows for hardware requirement changes to be communicated. However, Vendor acknowledges that if the implementation of Vendor add-on products is solely or significantly responsible for the need to add additional hardware and software that cost should not be incurred by the State.

To that end, measurement of the "baseline" and trending data shall be collected and examined no less than monthly. Vendor and State shall meet no less than quarterly to review the measurement criteria and trending of that data. As new add-on products are being used in district, State and Vendor staff shall examine the data for impact to the system performance. Both parties shall act in good faith to make the determination if system performance measurement criteria is outside of

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acceptable ranges solely or significantly due to add-on products or solely or significantly due to changes in usage patterns or features of the base system.

e. <u>Approved Add-On Products</u>
The following add-on products are currently approved for sale to Districts:

Campus Food Service
Campus Messenger with Voice

22. Warranties
The Vendor represents and warrants that the software will conform to the Vendor's documentation and that the software, as delivered, does not contain any code, routines, designed to disable, damage or erase the software or data. The Vendor represents and warrants that it will take commercially reasonable, industry precautions to prevent the transmission of computer viruses to the software. The State shall have all available legal and equitable rights and remedies to which it may be entitled with respect to Vendor's failure to comply with this provision of this Agreement.

23. Common Duties
The Vendor and the State agree to the following shared duties:
a.   To store, distribute or transmit only lawful material.
b.   To comply with all applicable laws or regulations, including state and federal data practices legislation.
c.   Not to distribute written marketing information referencing this specific project to third parties without the written consent of the other party.
d.   As the product is operated in the BIT data center, and as the Vendor has agreed to a service level as defined in Section I.E.8, the State agrees to inform the Vendor of any changes to the data center that may impact the Vendor's ability to achieve the service levels identified. The State and Vendor agree to cooperate to define and follow a change management process involving the BIT data center.

24. Technical Requirements
Vendor agrees that the solution must technically meet the criteria stipulated below.

a.   The product operates on a Microsoft Windows 2003 R2 x64 server platform or above.
b.   The database is Microsoft SQL 2005 SP2 or above, running on a Microsoft cluster server.
c.   Must be compatible with all Microsoft critical security updates.
d.   The web infrastructure is Apache Tomcat.
e.   SSL is supported.
f.   The client requirements are Microsoft Internet Explorer 8.0 or above; Microsoft Internet Explorer 7.0 or above for Apple computers.

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g. Adobe Acrobat and Java are the only plug-ins required for the browser.
h. TCP/IP protocol requirements for the client networks are defined as Ports 80, 443 and 8080.
i. TCP/IP protocol requirements for the Vendor software support are Ports 21, 80, 443, 1433, 3389 & 8080.
j. Based on a population of 130,000 students, Vendor requires a total of 2 database servers. The server configuration uses 4 Proliant BL460c Dual socket Quad core Xeon with 16GB of RAM in an active/passive cluster configuration. Future upgrades to the MS SQL server platform will require the database server platform to be migrated to VMWare as well. (NOTE: If the State wishes to utilize the feature commonly referred to as "Data Warehousing", a feature found in the system @ *System Administration > Data Utilities > Data Warehousing Settings*, or achieved via substantially similar "snap-shotting" of database instances, additional database hardware would be required).
k. Based on a population of 130,000 students, Vendor requires a total of 16 web/application servers. The hardware configuration is 3 HP Proliant BL490c Dual Socket Quad Core CPU with 96 GB of RAM. The application servers will be VMware virtual machines running in VMWARE VSPHERE 4.0 configured as dual processor systems with 8-12GB of ram each.
l. The above configuration will provide typical response time of 2 seconds or less for user access.
m. The typical transaction size is 5 Kb.
n. There are no Active X controls within the application.
o. The client hardware requirements are a Pentium 133 Mhz with 16 MB RAM or higher or a Mac-Power PC of 75 Mhz or higher.
p. The application is ODBC compliant.

25. Implementation

Vendor will perform implementation of any remaining public school districts not currently using the Infinite Campus Product to the State's management system as requested by the State and public school district. Districts requesting participation must enter into an Agreement with the State, through a Memorandum of Agreement (MOA). This document will be the basis for District approval by the State and thereby authorization to the Vendor for implementation.

Private schools see section I.E.19 for terms and conditions for implementation.

26. Data Conversion

The Vendor will conduct a core data conversion of any remaining public school districts not currently using the Infinite Campus Product as requested by the State for implementation. Data

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conversion will consist of the process of transferring core data from a current system operated by the District to the State's management system as described herewith this contract.

Data conversion will be provided to any remaining public school districts not currently using the Infinite Campus Product as requested by the State at a rate of $1,300.00 per day. Conversion will include data extraction, conversion and loading onto the new system. Core Data to be converted includes but is not limited to Current Year: census students, contacts, addresses, households, communication, student information (current year enrollments, attendance, discipline, health and transcripts), curriculum (trials, courses, sections, teachers assigned, periods and rosters), base data setup (district, schools, calendars, terms, schedules, periods, grade levels and calendar days).

Private school conversions (see section I.E.19 for terms and conditions).

27. Customization
The Vendor agrees to perform customization services of their product to meet the functionality requirements as requested by the State. Features that require in-depth requirements design with State involvement will be performed by the Vendor at a rate of $162.50 per hour. Such tasks shall be approved in writing by the State with firm estimates prior to commencement.

F. The Vendor agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the Vendor to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers or employees.

G. The Vendor agrees to provide services in compliance with the Americans with Disabilities Act of 1990.

II. THE STATE:
A. The State will make total payment under this contract not to exceed $5,300,000. This payment is based on actual costs and will be billed based on the terms and prices set forth in this Agreement. The State will pay Vendor expenses for pre-approved travel as a separate item not to exceed $20,000. This payment will be included in the total payment listed in this section. Meal expenses will be paid at State rates. Mileage will be paid at a rate of $0.505 per mile. Lodging will be paid at actual rates not to exceed $100.00 per night if State rates are not available and receipts will be required. This rate may be exceeded with prior approval from the State. Payments for licensing and support fees will be paid annually upon receipt of a detailed invoice from the Vendor. Payments for customization, training, and travel expenses will be paid monthly upon receipt of a detailed invoice from the Vendor. All proper evidence to satisfy payment requirements must be met by the Vendor prior to release of any payment under this provision. Terms and conditions for each payment component including pricing are set forth below.

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The State will not pay for Private Schools. Private schools will enter into separate agreements with the Vendor.

B. BACKGROUND

The State, through this contract, has purchased a license agreement to install a statewide student information computer software system to be used by School Districts throughout the State of South Dakota and the State Department of Education. This license as detailed in this contract covers usage by both the State and School Districts in South Dakota. This is a 4-year license agreement beginning July 1, 2010 and ending June 30, 2014 Prices and terms for payment as described below are effective for the entire period. The State will make payment for District participation under this agreement under the terms stipulated in this contract. However, payment will only be made on behalf of Districts receiving approval from the State through an end-user agreement executed between the State and District to operate the system.

The State will only pay for the product purchased solely under this contract on behalf of the School Districts. Additional products offered by the Vendor shall be paid by the Districts. If a District desires this additional product the Vendor shall notify the State and will enter into an agreement directly with the District. This agreement will cover only added features. The original product is enforceable only through this contract.

C. PAYMENT TERMS AND CONDITIONS

Payment in Section II.A. will be provided based on the following components.

1. License:

The State will pay license fees at the following rates: The State will pay an annual rate for State Edition at a rate of $2.00 per student based upon the actual number of students in all public school districts calculated using the fall enrollment from the prior school year. The State will pay an annual rate for the District Edition at a rate of $3.00 per student based upon the actual number of students in those school districts utilizing District Edition calculated using the fall enrollment from the prior school year. Payment for the license fee will be made in annually each July 1st upon receipt of a billing submitted by the Vendor and approved by the State. The billing will identify the actual total count by District

Private School Districts:
For private school districts, the rate is based on per student annual fee of $3.00 per student billed annually for a period not to exceed sixteen quarters or four years. Payment, however, for Private Schools will not be paid by the State. The Vendor will enter into a separate agreement for payment arrangements for Private Schools participation. The purpose of this provision is to set forth the Vendor's responsibility for pricing if a Private School in South Dakota desires to obtain a license for the use of the State's system. The rate, however, is limited to the functionality of the software purchased under this contract. If additional features are requested by the Private District it may alter the per student price.

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If this should occur prices will be mutually agreed upon between the Vendor and individual Private District.

2. Account Management

The State will pay a fixed annual rate in the amount of $75,000.00 total for the following account representatives: District Client Executive (formerly called an Account Manager) that works with South Dakota school districts using District Edition; a State Client Executive that works with the state of South Dakota; and a Business Analyst that works on the localization needs of South Dakota districts and the State. Duties of these positions are stipulated in section I. E. above.

3. Support

The State will pay support fees at the following rates: The State will pay an annual rate for State Edition at a rate of $0.40 per student based upon the actual number of students in all public school districts calculated using the fall enrollment from the prior school year. The State will pay an annual rate for the District Edition at a rate of $3.00 per student based upon the actual number of students in those school districts utilizing District Edition calculated using the fall enrollment from the prior school year. Payment for the support fees will be made in quarterly installments upon receipt of a billing submitted by the Vendor and approved by the State. The billing will identify the actual total count by District.

The State will not pay for Private School Support. Private Schools will enter into separate agreements with the Vendor based on the Vendor's established rates.

4. Training

The State will make payment for training services, provided by the Vendor at the following rates:

Training approved by the State will be reimbursed at a rate of $150.00 per hour for off-site (WebEx or at Infinite Campus corporate facility) and at a rate of $1,400.00 per day plus travel expenses for on-site services.

Payment will be made on a monthly basis based upon an itemized billing. In addition, the Vendor will submit documentation of mileage and copies of receipts for lodging and other incidental expense.

The State will not pay for Private School training. Private Schools will enter into separate agreements with the Vendor.

5. Customization

The State will pay for customization based upon a fixed rate of $162.50 per hour. Customization will be performed in accordance with Section I.E.27. Payment will be made on a monthly basis based upon an itemized billing. The Vendor will submit a report detailing the hours worked by each individual for each

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       project accompanying each billing. The report should be in a format that it is easily tracked and confirmed by the State

III.   SUPERCESSION PROVISION: All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

IV.   AMENDMENT PROVISION: This contract contains the entire agreement between the parties, and is subject to and will be construed under the laws of the State of South Dakota, and may be amended only in writing signed by both parties.

V.   TERMINATION PROVISION: This agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the State at any time with or without notice.

VI.   INSURANCE PROVISION: The Vendor agrees, at its sole cost and expense, to maintain the appropriate insurance required by the State during the period of this agreement.

VII.   CONTROLLING LAW PROVISION: This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

VIII.   COMPLIANCE PROVISION: The Vendor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

    IX.   DEFAULT PROVISION: This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority or funds become unavailable by operation of law or federal funds reductions. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.
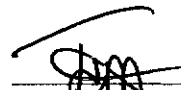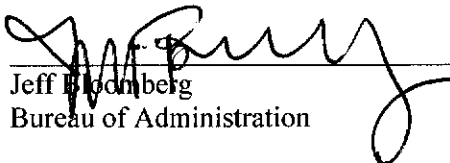
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In witness hereto the parties signify their agreement by signature affixed below:

_____   _____ 9|8|10
Consultant Signature   (Date)   Authorized Representative   (Date)
                                      Department of Education

_____ 9|15|10   _____ 9-20-2010
Jeff Bloomberg   (Date)   Otto Doll   (Date)
Bureau of Administration   Bureau of Information and Telecommunications

State Agency Coding: (Company/Account/Center)   1000/520405000000000000/1219024
State Agency contact who can provide additional
information regarding this contract: Tami Darnall   (605) 773-3248
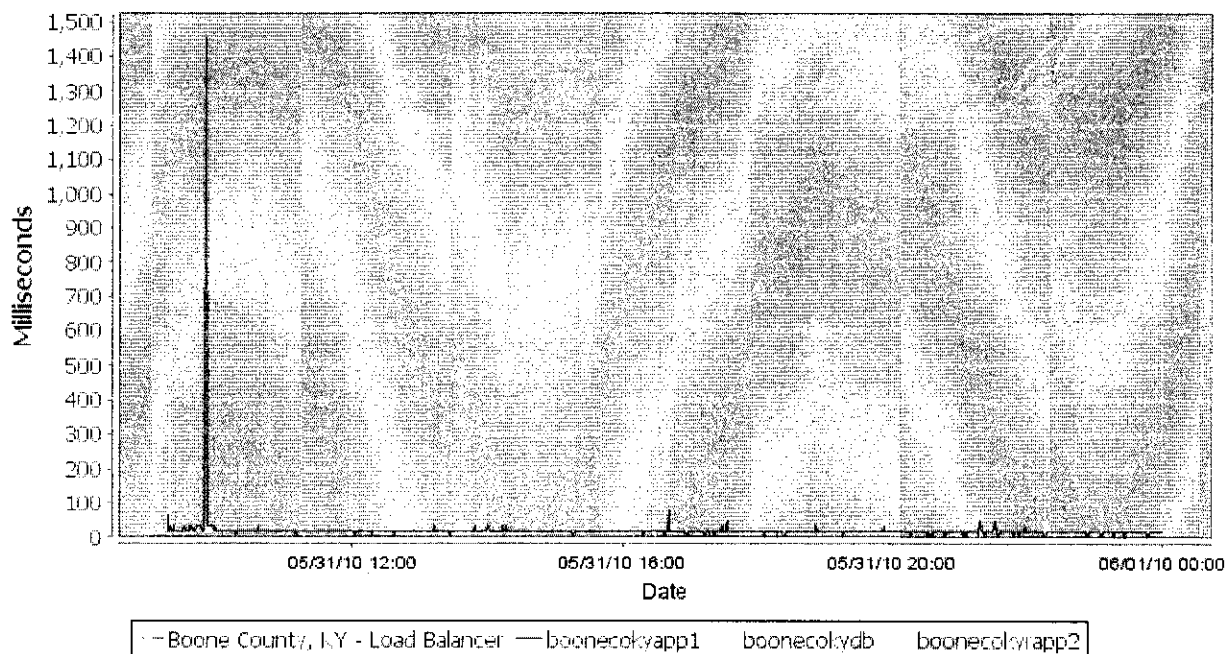
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Exhibit A,
Sample System Performance Report

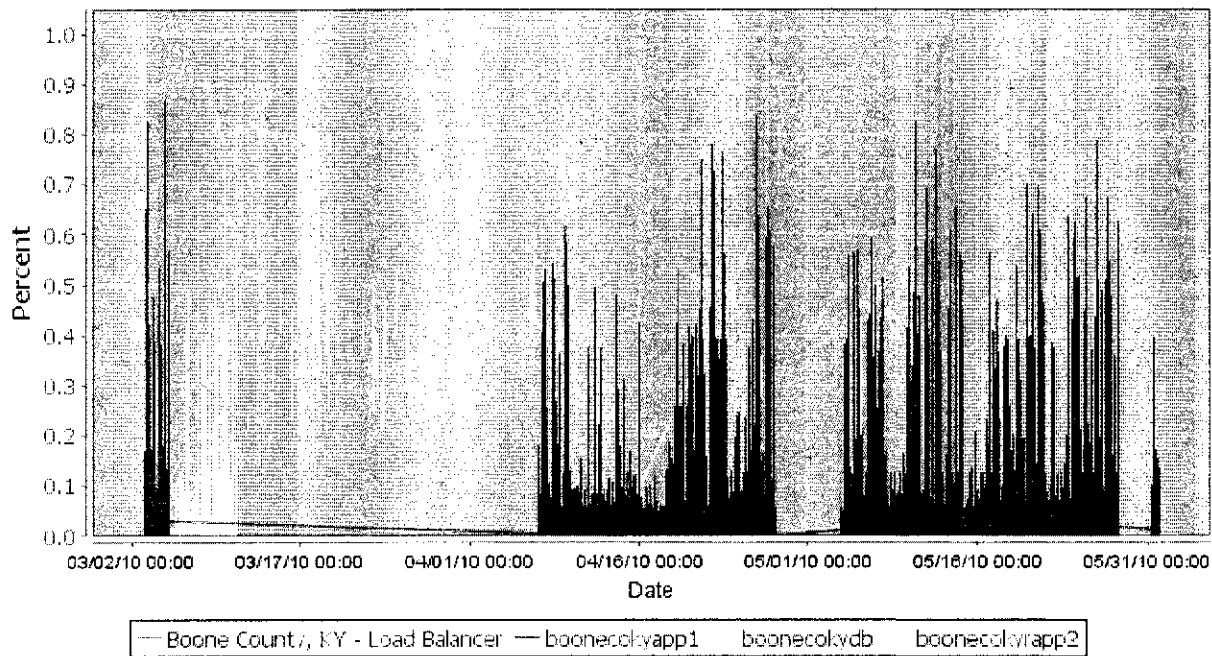## System Availability from '2010-3-1' to '2010-6-1'

Boone County, KY - Load Balancer — boonecokyapp1   boonecokydb   boonecokyapp2

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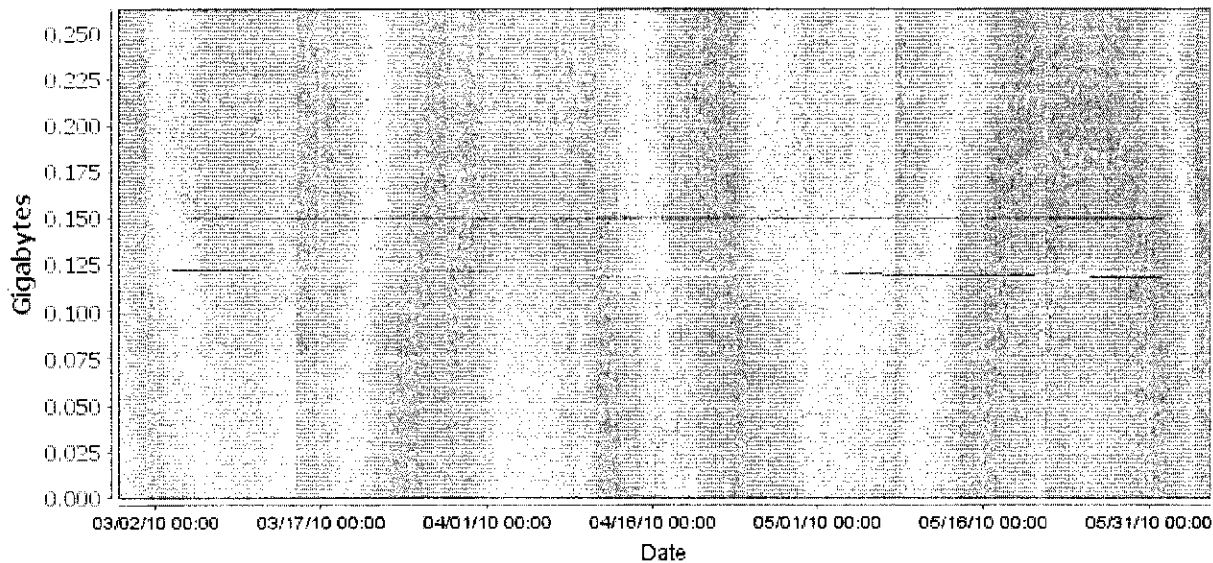| (Infinite Campus, Incorporated |) | | (Office of Finance and Management |) |
| (4321 109th Avenue NE |) | | (800 Governors Drive |) |
| (Blaine, MN 55449 |) | AND | (Pierre, SD 57501 |) |

Total CPU from '2010-3-1' to '2010-6-1'

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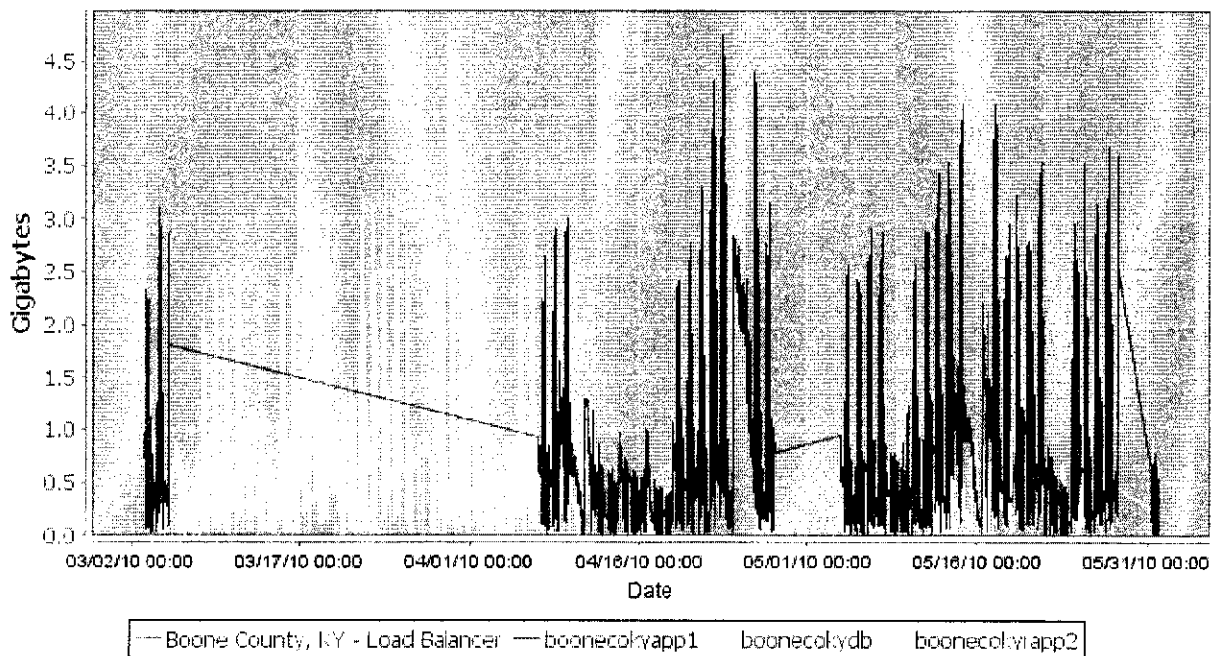## Disk Free Space from '2010-3-1' to '2010-6-1'

Boone County, KY - Load Balancer — Boone County, KY - Load Balancer — boonecol:yapp1 boonecol:yapp1 — boonecol:ydb boonecol:ydb boonecol:yrapp2 — boonecol:yrapp2

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Tomcat Free Memory from '2010-3-1' to '2010-6-1'

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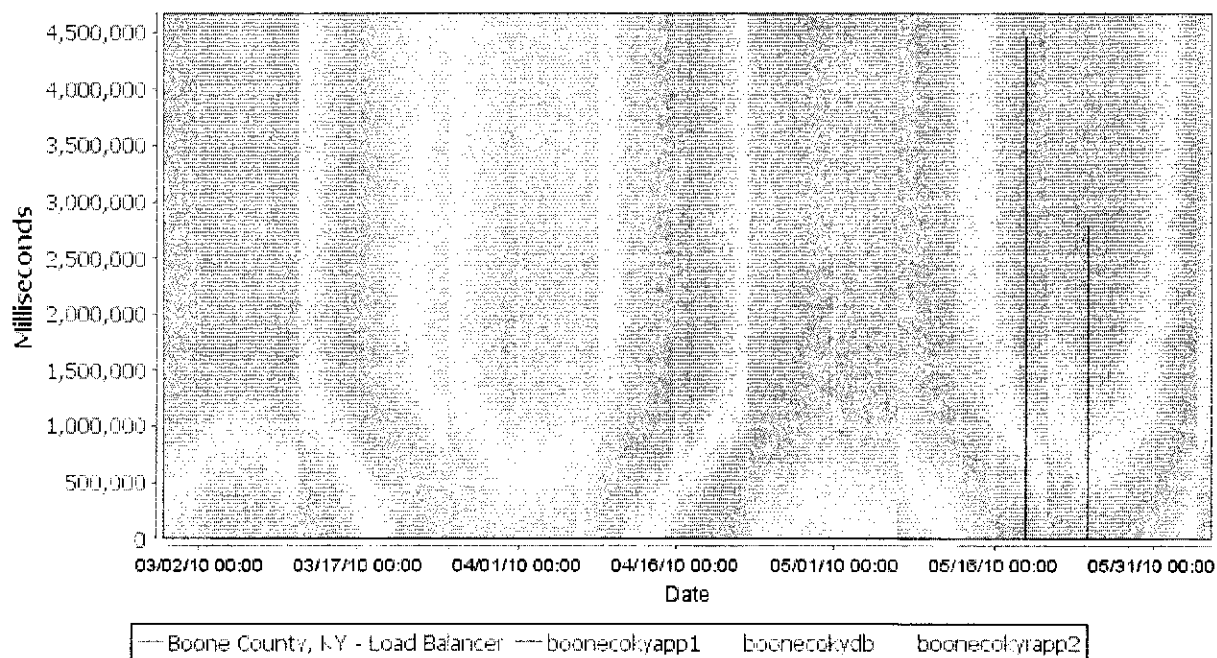
Tomcat Response Time from '2010-3-1' to '2010-6-1'

Boone County, KY - Load Balancer — boonecokyapp1   boonecokvdb   boonecokyrapp2

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Tomcat Sessions from '2010-3-1' to '2010-6-1'

Boone County, KY - Load Balancer — boonecokyapp1   boonecokydb   boonecokyrapp2

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